

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

July 15, 1998

UNITED STATES OF AMERICA	)	
Complainant,	)	
	)	
v.	)	8 U.S.C. § 1324a Proceeding
	)	OCAHO Case No. 98A00059
	)	
THE COFFEE BAGEL LINK,	)	
INC., A MISSOURI CORPORATION,	)	
Respondent.	)	

**MARVIN H. MORSE**  
**Administrative Law Judge**

**Appearances: Karl V. Cozad, Esq., for Complainant.**  
**Jeff Strum, pro se**

**FINAL DECISION AND ORDER GRANTING COMPLAINANT'S  
MOTION FOR DEFAULT JUDGMENT**

**I. PROCEDURAL HISTORY**

The Immigration and Naturalization Service (INS or Complainant) filed a Complaint on March 18, 1998, in the Office of the Chief Administrative Hearing Officer (OCAHO) against The Coffee Bagel Link, Inc., a Missouri Corporation (Respondent). An underlying Notice of Intent to Fine (NIF) was previously served on Respondent on January 28, 1998. Respondent filed a timely request for hearing, dated February 13, 1998. The request was made by Jeff Strum, as Respondent's President.

Count I of the Complaint charges that Respondent knowingly hired and continued to employ Julio Cesar Brito-Millan, an alien not authorized to be employed in the United States, assesses a civil money penalty of \$1,124, and requests that Respondent be ordered to cease and desist from violating 8 U.S.C. § 1324a(a)(1)(A).

Count II of the Complaint charges that Respondent failed to prepare the employment eligibility verification form (Form I-9) or, alternatively, failed to make available for inspection the Form I-9, for three named individuals, and assesses a civil money penalty of \$1,020, \$280 for two individuals, A1 and A2, and \$460 for a third individual, A-3.

Count III of the Complaint charges that Respondent failed to ensure that employee Diane Hemphill properly completed section 1 of the Form I-9 and failed to complete properly section 2 of the Form I-9, and assesses a civil money penalty of \$200.

Count IV of the Complaint charges that Respondent failed to ensure that three named individuals completed properly section 1 of the Form I-9, and assesses a civil money penalty of \$525.

Count V of the Complaint charges that Respondent failed to complete section 2 of the Form I-9 for eleven named individuals, and assesses a civil money penalty of \$1,925.

In total, INS requests civil money penalty of \$4,794 and that a cease and desist order issue.

On March 19, 1998, OCAHO issued a Notice of Hearing (NOH), which transmitted a copy of the Complaint to Respondent.

On June 1, 1998, INS filed a Motion for Default Judgment with a Declaration of Counsel and a copy of a letter from Respondent's president Jeff Strum advising that Respondent is without assets to pay creditors. INS requests that Respondent be found in default for failure to plead or otherwise defend within thirty days after Service of the Complaint. 28 C.F.R. § 68.9(a).

On June 3, 1998, I issued an order to Show Cause which advised Respondent that the pendency of a bankruptcy proceeding, or inability to satisfy obligations incurred whether liquidated or unliquidated, does not affect the jurisdiction of this forum to proceed to decision. Respondent had until June 19, 1998, to file an Answer to the Complaint. A copy of that Order was sent both regular and certified mail to Respondent. A copy of the Postal Service return receipt indicates that Respondent received the Order to Show Cause on June 19, 1998. To date, Respondent has not responded to the Order to Show Cause nor filed an Answer to the Complaint.

## **II. DISCUSSION**

The time to respond is past. The copy addressed to Respondent having been effectively delivered, I find Respondent in default:

Failure of the respondent to file an answer within the time provided shall be deemed to constitute a waiver of his/her right to appear and contest the allegations of the complaint. The Administrative Law Judge may enter a judgment by default.

Title 28 C.F.R. § 68.9(b) of OCAHO Rules of Procedure. The Motion is granted.

### **III. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER**

I have considered the Complaint and subsequent pleadings. For the reasons stated, I find and conclude that:

1. Complainant's Motion For Default Judgment is granted;
2. As alleged in Count I of the Complaint, Respondent has violated 8 U.S.C. § 1324a(a)(1)(A) by knowingly hiring and/or continuing to employ either directly or through a contract, subcontract or exchange, one named individual not authorized to work in the United States. Respondent is ordered to cease and desist from such practices in violation of 8 U.S.C. § 1324a, and shall pay a civil money penalty in the amount of \$1,124 for this violation;
3. As alleged in Count II of the Complaint, Respondent has failed to prepare the employment eligibility verification form (Form I-9) or alternatively, failed to make available for inspection the Form I-9 for three named individuals in violation of 8 U.S.C. § 1324a(a)(1)(B), or, alternatively, 8 U.S.C. § 1324a(b)(3), and shall pay a civil money penalty in the amount of \$1,020;
4. As alleged in Count III of the Complaint, Respondent has failed to ensure that one named individual properly completed section 1 of the Form I-9 and failed to properly complete section 2 of the Form I-9 for this individual in violation of 8 U.S.C. § 1324a(a)(1)(B), and shall pay a civil money penalty in the amount of \$200;
5. As alleged in Count IV of the Complaint, Respondent has failed to ensure that three named individuals properly completed section 1 of the Form I-9 in violation of 8 U.S.C. § 1324a(a)(1)(b), and shall pay a civil money penalty in the amount of \$525;
6. As alleged in Count V of the Complaint, Respondent has failed to properly complete section 2 of the Form I-9 for eleven named individuals in violation of 8 U.S.C. § 1324a(a)(1)(B), and shall pay a civil money penalty in the amount of \$1,925;
7. Respondent shall pay an aggregate civil money penalty totaling \$4,794.00 for the violations listed in the five counts of the Complaint.

This Final Decision and Order Granting Complainant's Motion for Default Judgment is the final action of the judge in accordance with 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.52(c)(iv). As provided at 28 C.F.R. § 68.53(a)(2), this action shall become the final order of the Attorney General unless, within thirty (30) days from the date of this Final Decision and Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to parties adversely affected. See 8 U.S.C. §§ 1324a(e)(7), (8) and 28 C.F.R. § 68.53(a).

SO ORDERED.

Dated and entered this 15th day of July, 1998.

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Marvin H. Morse  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Final Decision and Order Granting Complainant's Motion for Default Judgment were mailed first class, and a copy sent certified mail addressed to Jeff Strum, this 15th day of July, 1998, addressed as follows:

Counsel for Complainant

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Respondent

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